



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for the return of double the security deposit pursuant to section 38 and 67 of the Act;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended hearing via conference call and provided undisputed affirmed testimony. Both parties confirmed that the tenant served the landlord with the notice of hearing package and the submitted documentary evidence. Both parties also confirmed that the landlord served 1 documentary evidence package to the tenant. The landlord confirmed that the tenant was not served with the second or the third late evidence package. I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficient served as per section 90 of the Act. I also order that the landlord's second and third late evidence package be excluded from consideration for this hearing as it is clear that the landlord did not serve the tenant.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for return of double the security deposit and recovery of the filing fee?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

During the hearing it was clarified with both parties that a signed tenancy agreement was made for which the landlord provided a copy. The landlord clarified that a RTB26 form was used to add additional tenants to the signed tenancy agreement. The tenant confirmed this claim. As such, both parties confirmed that this tenancy began on May 1, 2015 on a fixed term tenancy ending on April 30, 2016. Both parties confirmed that the tenancy ended on April 30, 2016. The monthly rent was \$2,000.00 payable on the 1<sup>st</sup> day of each month. A security deposit of \$1,000.00 was paid.

The tenant seeks a monetary claim of \$1,962.00 which consists of:

\$2,000.00	Return of Original \$1,000.00 Security Deposit
	Compensation, re: Sec. 38(6), Fail to Comply
-\$33.00	Damage caused by Tenant, Repair of Hole in wall
-\$5.00	Replacement of Key

During the hearing discussion resulted in that the landlord agrees to the deductions as listed above by the tenant.

Both parties agreed that the tenants' forwarding address was received by the landlord on May 15, 2016, but that both parties also agreed that a forwarding address in writing was received in an email on August 9, 2016.

Both parties agreed that the landlord has not filed an application for dispute

### Analysis

I accept the undisputed affirmed evidence from both parties that the tenancy ended on April 30, 2017; a \$1,000.00 security deposit was paid by the tenant and that the tenant had provided his forwarding address in writing to the landlord on August 9, 2016 via email which the landlord had accepted. The landlord confirmed that he did not have permission from the tenant to retain the security deposit nor did the landlord make an application to dispute the return the security deposit against a claim in damages.

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security deposit.

As such, I find that the landlord failed to return the \$1,000.00 security deposit as per section 38(1) of the Act and has extinguished his right for a claim against the security deposit. The tenant is entitled to return of the original \$1,000.00 minus the agreed upon \$38.00 deduction.

I also find that the landlord having failed to comply with Section 38 (1) of the Act is required to pay a monetary award equal to the \$1,000.00 security deposit as per section 38 (6).

The tenant has established a total monetary claim of \$1,962.00. The tenant having been successful is also entitled to recovery of the \$100.00 filing fee.

### Conclusion

The tenant is granted a monetary order for \$2,062.00.

This order must be served upon the landlord. Should the landlord fail to comply with the order, the order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: August 31, 2017

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Residential Tenancy Branch